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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider the  
Adoption of a General Order and Procedures to  
Implement the Digital Infrastructure and Video  
Competition Act of 2006.

RULEMAKING 06-10-005

**OPENING COMMENTS OF THE CITY OF SAN JOSE, CALIFORNIA  
TO THE ORDER INSTITUTING RULEMAKING**

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In response to the invitation and request of the Public Utilities Commission, the City of San Jose respectfully submits the following opening comments to a provision of the Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 ("OIR"), and the Proposed General Order Implementing the Digital Infrastructure and Video Competition Act of 2006 ("Proposed General Order") attached as "Attachment B" to the OIR.

**I. COMMENTS TO THE OIR**

The City hereby comments on the following provisions of the OIR:

**C. Applicants with Existing Franchises**

**1. Franchise Effective Date**

The Proposed Order states:

"Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise may choose to renew the local franchise or seek a State Video Franchise. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the state franchise is effective." (Attachment B, page 12).

The Order as stated is unclear but can be easily clarified as follows:

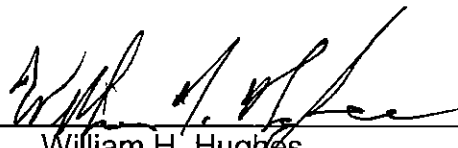
"Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise ~~may choose to~~ **shall either** renew the local franchise or seek a State Video Franchise. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the state franchise is effective."

Unless this change is made the order is not clear as to whether an Incumbent Cable Operator has another choice, and if so what that choice is. It should be clear that an Incumbent Cable Operator does not have the choice of continuing to operate under an expired franchise after January 2, 2008, when a state franchise is available. If the

Incumbent Cable Provider and the Local Entity are unable to reach agreement on a local franchise extension or renewal, an Incumbent Cable Operator should be required to obtain a state franchise to provide Video Service.

Dated: October 25, 2006

Respectfully submitted,  
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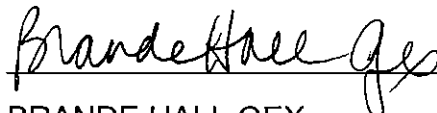
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **OPENING COMMENTS OF THE CITY OF SAN JOSE, CALIFORNIA TO THE ORDER INSTITUTING RULEMAKING** on all known parties to Rulemaking 06-10-005 by transmitting an e-mail message with the document attached to each party named in the official service list attached hereto.

I further hereby certify that I have this day served a copy of **OPENING COMMENTS OF THE CITY OF SAN JOSE, CALIFORNIA TO THE ORDER INSTITUTING RULEMAKING** on all known parties to Rulemaking 06-10-005 by mailing a properly addressed copy by first-class mail with postage prepaid to the following party:

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Executed on October 25, 2006, at San Jose, California.

  
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